SERVED: September 27, 2007

NTSB Order No. EA-5320

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of September, 2007

ROBERT A. STURGELL, Acting Administrator, Federal Aviation Administration, Complainant, v. WILLIAM R. ARMSTRONG, Respondent.	Docket SE-17854

OPINION AND ORDER

Respondent and the Administrator have both appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on January 25, 2007, after a bifurcated evidentiary hearing held on December 14, 2006, and January 25, 2007.[1] The Administrator's October 10, 2006 emergency order,

[1] A copy of the initial decision, an excerpt from the hearing transcript, is attached.

which functions as the complaint in this case, revoked respondent's private pilot certificate, based on the pertinent factual allegations contained in the Appendix to this opinion and alleged violations of the Federal Aviation Regulations (FARs). In particular, the Administrator alleged violations of 14 C.F.R. §§ 39.7,[2] 43.13(a) and (b),[3] 43.3(a),[4] 43.9,[5] 91.7(a),[6] 91.13(a),[7] 91.103,[8] and 91.405(a).[9] Respondent filed a timely

[2] Section 39.7 requires aircraft operators to comply with all applicable airworthiness directives.

[3] Section 43.13(a) requires persons performing maintenance or alterations on aircraft parts to use the manufacturer's methods, techniques, and practices, or other such methods, techniques, and practices that are acceptable to the Administrator. Subsection (b) requires persons performing maintenance or alterations on aircraft to use materials of such a quality that the component is at least equal to its original or properly altered condition.

[4] Section 43.3(a) prohibits unauthorized persons from performing maintenance on aircraft.

[5] Section 43.9 requires persons maintaining an aircraft to make entries in the maintenance record that contain: (1) a description of the work; (2) the date of completion of the work; (3) the name of the person performing the work; and (4) the signature, certificate number, and type of certificate of the person approving the work.

[6] Section 91.7(a) prohibits operation of a civil aircraft that is not in an airworthy condition.

[7] Section 91.13(a) prohibits careless or reckless operation of an aircraft.

[8] Section 91.103 requires pilots-in-command to become familiar with all available information concerning the flight before operating the aircraft.

[9] Section 91.405(a) requires regular inspections of an aircraft,

notice of appeal, and subsequently waived the application of the Board's emergency procedures, 49 C.F.R. §§ 821.52—821.57. Except for the § 91.103 violation, which the Administrator withdrew at the start of the hearing,[10] the law judge affirmed all of the violations, but reduced the sanction to a 10-month suspension. Tr. at 7, 467. Respondent appeals the law judge's findings, and the Administrator appeals the reduction of sanction. We deny respondent's appeal and grant the Administrator's appeal.

Background

The crux of the case is respondent's operation of his allegedly unairworthy Mooney M20J aircraft on two flights—the first on March 26, 2006, from Charlottesville to Culpeper, Virginia, and the second on April 12, 2006, from Culpeper to Hampton Roads, Virginia. The Administrator alleged that the aircraft was unairworthy due to damages sustained in a January 27, 2006 gear-up landing, primarily because the aircraft experienced a propeller strike in that crash landing, and the Lycoming engine, after experiencing a propeller strike, did not

(..continued)
but also requires the repair of any maintenance discrepancies identified between such inspections.

[10] The Administrator further amended the complaint at the hearing, on motion of the Administrator's counsel, to conform to the evidence as to the dates of the gear-up landing and the flights that are at issue in this case. See the Appendix to this opinion, at n.36 infra.

meet the requirements of Airworthiness Directive (AD) 2004-10-14. Compliance with AD 2004-10-14 required, after a propeller strike with this particular engine, removal of the gear retaining bolt and lockplate, installation of a new bolt and lockplate, and inspection and repair, if necessary, of the crankshaft counter bored recess, alignment dowel, bolt hole threads, and crankshaft gear. Exh. A-14 at 7. In addition, the aircraft sustained other damage, to the belly of the aircraft, and the Administrator alleged that this damage also rendered the aircraft unairworthy.

Facts

It is undisputed that, on January 27, 2006, respondent landed his aircraft, with the landing gear up, at Eagles Nest Airport in Waynesboro, Virginia. Tr. at 303-09. The aircraft sustained damage to the propeller, gear doors, belly skins, bulkheads and stringers, fairings, and ADF loop antenna. Tr. at 23, 48-49, 50, 73, 116, 152. Shortly after the accident, respondent corresponded with Aviation Safety Inspector (ASI) Arthur Munns and requested a special flight permit (ferry permit) to fly the aircraft to a repair facility. Tr. at 28; Exhs. A-2, A-3. Mr. Munns confirmed the need for a ferry permit (Tr. at 37), and respondent obtained a permit from ASI Manuel Carvalho for a one-time flight (Tr. at 71; Exh. A-5), so that respondent could take the aircraft to Charlottesville Airport

for repairs (Tr. at 57-60, 69-70; Exh. A-5). After Landmark Aviation (Landmark) sent a mechanic to inspect the aircraft, and remove and replace the damaged propeller, respondent flew the aircraft to Landmark's facility at Charlottesville. Tr. at 60-63, 69-70, 72, 326. He subsequently became unhappy with the progress of repairs, and contacted the FAA to request a new ferry permit to fly the aircraft elsewhere for service. Tr. at 353.

At the hearing, the Administrator presented six witnesses: ASIs Munns and Carvalho; Martin Dodson, of Landmark; ASIs John Keymont and Ramon Smeltz; and J.R. Smith, owner of Aerodyne Aviation (Aerodyne). Mr. Munns testified that the propeller and "skin" damage rendered the aircraft unairworthy. Tr. at 49. Mr. Carvalho testified that his inspection of the aircraft at Eagles Nest confirmed that the aircraft was unairworthy because of all the damage the aircraft sustained. Tr. at 195-96. Mr. Carvalho also testified that, when respondent later requested a "ferry flight" from Charlottesville to Culpeper, Mr. Carvalho advised him that the aircraft needed a new inspection before the issuance of another ferry permit, and that respondent became aggravated and hung up the telephone. Tr. at 196, 199, 201-02; Exh. A-16.

Mr. Carvalho said that another ferry permit was required because, as both he and Mr. Keymont testified, the permit under

which respondent flew to Landmark had expired when he reached his destination. Tr. at 202, 227. Mr. Dodson testified that respondent paid his bill to Landmark on March 22, 2006, and told Mr. Dodson that he had another mechanic who would inspect and move the aircraft. Tr. at 82. Mr. Dodson did not reinstall inspection panels that he removed for his inspection of the aircraft, assuming that the new mechanic would conduct his own inspection before reinstalling the panels. Mr. Dodson said that the aircraft was flown from Landmark that weekend, that pieces of the aircraft were still at Landmark, and that respondent left a letter for Mr. Dodson that thanked him for the "maintenance release." Tr. at 83, 84. Mr. Dodson said he was surprised to receive the letter, because the only maintenance log entry he had made was for the initial February 24, 2006 ferry permit inspection for the one-time flight from Eagles Nest to Landmark. Tr. at 84; Exh. A-9. Accordingly, Mr. Dodson informed the FAA that he had not released the aircraft. Tr. at 86-87.

The other two inspectors then testified. Mr. Keymont testified that aircraft mechanic Mike Hartle, acting as respondent's agent, contacted Mr. Keymont to discuss requirements for a ferry permit from Charlottesville to Mr. Hartle's facility in Pennsylvania. After Mr. Keymont received assurances that Mr. Hartle would comply with his directions, Mr. Keymont issued a ferry permit to Mr. Hartle.

Tr. at 226-229. Mr. Keymont later learned that the aircraft was flown somewhere other than Pennsylvania, and that Mr. Hartle was not involved with the flight. Tr. at 230. Next, Mr. Smeltz testified that when he learned that the aircraft was flown to Culpeper instead of Pennsylvania, he went to Culpeper, inspected the aircraft, and noted the incorrect installation of the nose landing gear doors. Mr. Smeltz testified that the aircraft was unairworthy and that he considered the incorrect installation of the landing gear doors to be a maintenance discrepancy. Tr. at 261, 264, 268.

FAA personnel at the Dulles Flight Standards District Office then learned that the aircraft had been relocated yet again, this time to Aerodyne at Hampton Roads. Mr. Keymont went to inspect the aircraft. Tr. at 230-31. Mr. Keymont testified that the damage he observed involved a "major repair." Tr. at 257. Finally, Mr. Smith testified that he told respondent that he would need a ferry permit to fly from Culpeper to Hampton Roads. Tr. at 135, 137, 139. Mr. Smith told respondent that he could not inspect the aircraft because it was not physically located at his facility, and recommended that respondent find someone at Culpeper to inspect the aircraft. Tr. at 140. Mr. Smith testified that respondent arrived at Aerodyne only a few hours later. Id.

Respondent testified in his own behalf. He stated that he became dissatisfied with Landmark's repair progress, and, after he paid his bill, returned to Landmark on March 26, 2006, to fly his aircraft to Culpeper. He testified that the panels were not on the aircraft and that he returned to his Centreville, Virginia, home to retrieve spare fairings from a previous fairing replacement. Tr. at 359, 360-61. Respondent said that he returned to Landmark, installed the fairings, made an entry in the maintenance log showing that he had replaced the DME and transponder antennas and installed the fairings, and that he then flew to Culpeper. Tr. at 373, 376; Exh. A-9. Respondent indicated that he then believed the aircraft to be both "airworthy" and "safe to fly," because it did not have any maintenance discrepancies at the time of its annual inspection on December 31, 2005, and because the aircraft was in compliance with all ADs at the time of that inspection. And he testified that he believed that Mr. Dodson had completed the requirements of AD 2004-10-14. Tr. at 374.

Respondent said that, after he arrived at Culpeper, he removed the old fairings and took them home to refinish them, and that he later reinstalled them on the aircraft. Tr. at 374, 376-77. He testified that he took the aircraft to White Hawk Aviation, in Culpeper, where one of the owners told him that engine disassembly was only a recommendation, that AD

2004-10-14 required only replacement of a bolt. Tr. at 379, 382. Respondent decided to have the engine teardown accomplished anyway, because his insurance company agreed to pay for it. Id. He contacted Aerodyne on April 15, 2006, and flew there the same day. Tr. at 380, 383. He testified that, before he flew to Aerodyne, on or about April 5, 2006, he removed the nose landing gear doors and reinstalled new ones, under a mechanic's observation, and made an entry in the maintenance log. Tr. at 387-89; Exh. R-6.

The law judge found that the Administrator proved all of the disputed allegations[11] and concluded that respondent violated all eight FAR provisions that remained after the Administrator withdrew the § 91.103 allegation.[12] Respondent argues that a preponderance of reliable, probative, and substantial evidence does not support the remaining allegations and factual findings,

[11] Respondent admitted that he has a private pilot certificate, that he owns the aircraft, and that the aircraft has a Lycoming engine. He also admitted that he experienced a gear-up landing, that he flew the aircraft from Charlottesville to Culpeper without a ferry permit, that he flew from Culpeper to Hampton Roads without a ferry permit, and that he has never held a mechanic certificate.

[12] On appeal, respondent does not dispute that the aircraft experienced a propeller strike in the gear-up landing, that the aircraft sustained damage in the gear-up landing rendering it unairworthy, that he obtained a ferry permit to fly to Charlottesville to repair the damage resulting from the gear-up landing, and that it was not repaired at Charlottesville.

which entail airworthiness and maintenance requirements. Respondent's Appeal Br. at 14.

Law

On appeal, we consider whether the findings of fact are supported by a preponderance of reliable, probative, and substantial evidence; whether conclusions are made in accordance with law, precedent, and policy; whether the questions on appeal are substantial; and whether any prejudicial errors occurred. 49 C.F.R. § 821.49. When evaluating a law judge's determination that a respondent violated a regulation as the Administrator has alleged, we conduct a *de novo* review.[13] A law judge's findings of fact are "susceptible of *de novo* review."[14] In reviewing the law judge's decision, the Administrator has the burden of proof by a preponderance of the evidence.[15]

[13] See Administrator v. Andrzejewski, NTSB Order No. EA-5263 at 3, 4 (2006); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 1 n.5 (1993).

[14] Frohmuth and Dworak, supra at 1 n.5; Administrator v. Wolf, NTSB Order No. EA-3450 (1991) (the Board may reverse a law judge's decision if the Board cannot reconcile the law judge's findings with the evidence).

[15] Administrator v. Opat, NTSB Order No. EA-5290 at 2 (2007), citing Administrator v. Van Der Horst, NTSB Order No. EA-5179 at 3 (2005) (Administrator has the burden to prove an aircraft is not airworthy to prevail on allegation that respondent violated § 91.7(a), and holding the Administrator did not prove this); and Administrator v. Schwandt, NTSB Order No. EA-5226 at 2 (2006) (Board's role is to determine, reviewing evidence the Administrator presents, whether she met burden of proof).

We have previously held that inspectors, mechanics, and operators must adhere to a high standard when performing maintenance on an aircraft.[16] We have also recognized that keeping accurate maintenance records is a critical aspect of complying with the FARs.[17] We have previously expected firm compliance with FAR requirements regarding the performance of maintenance and keeping adequate maintenance records.

With regard to the allegation that respondent violated 14 C.F.R. § 91.7(a), we note that the standard for airworthiness consists of two prongs, whether the aircraft (1) conforms to its type certificate and applicable ADs[18]; and (2) is in a condition for safe operation.[19] The Board considers whether the operator knew or should have known of any deviation of conformance with

[16] See, e.g., Administrator v. Raab, NTSB Order No. EA-5300 at 10 (2007).

[17] See Administrator v. Hampton, NTSB Order No. EA-5189 at 2 (2005) (entries did not adequately describe work performed, despite accompanying, descriptive "work cards"); Administrator v. Bielstein, NTSB Order No. EA-4980 at 3 (2002) (inspectors rely on maintenance records); Administrator v. Scott, NTSB Order No. EA-4030 at 2 (1993) (violation of 43.9(a) proved for failure to include date of maintenance).

[18] In this case, after a propeller strike, AD 2004-10-14 requires an inspection and certain maintenance, followed by additional maintenance if the inspection reveals it is necessary.

[19] Opat, supra, and cases cited therein.

the aircraft's type certificate.[20] We have also noted that the term "airworthiness" is not synonymous with flyability.[21]

The Administrator also charged respondent with violating 14 C.F.R. § 91.13(a). We note that we have previously recognized that the Administrator routinely includes a § 91.13(a) careless and reckless allegation in complaints alleging violation of operational regulations. The Administrator proves a charge under § 91.13(a) when an operational violation has been charged and proven.[22]

Regarding sanction, the FAA Civil Penalty Administrative Assessment Act (the Act)[23] states that the Board is bound by written agency guidance available to the public relating to sanctions to be imposed unless the Board finds that any such interpretation or case sanction guidance is arbitrary, capricious, or otherwise not in accordance with law.[24] It is the Administrator's burden under the Act to clearly articulate the sanction sought, and to ask the Board to defer to that

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[20] See, e.g., Administrator v. Yialamas, NTSB Order No. EA-5111 (2004); Administrator v. Bernstein, NTSB Order No. EA-4120 at 5 (1994).

[21] Administrator v. Doppes, 5 NTSB 50, 52 n.6 (1985).

[22] See Administrator v. Seyb, NTSB Order No. EA-5024 at 4 (2003); Administrator v. Nix, NTSB Order No. EA-5000 at 3 (2002); Administrator v. Pierce, NTSB Order No. EA-4965 at 1 n.2 (2002).

[23] 49 U.S.C. §§ 44709(d) and 46301(d).

[24] Administrator v. Hewitt, NTSB Order No. EA-4892 at 2 (2001).

determination, supporting the request with evidence showing that the sanction has not been selected arbitrarily, capriciously, or contrary to law.[25]

Analysis

We will first address respondent's appeal regarding the law judge's findings, and then turn to the Administrator's appeal regarding the modification of sanction.

Airworthiness.

As previously indicated, the critical aspect of this case is respondent's operation of his aircraft in an allegedly unairworthy condition, without a ferry permit, on two occasions. Respondent argues that the Administrator failed to introduce evidence that his aircraft was unairworthy, emphasizing the failure to put the aircraft's type certificate into evidence. Respondent argues that, as in Yialamas, supra, because the Administrator did not place the type certificate in the record, what was required for the aircraft to conform to its type certificate was not established. Respondent's Appeal Br. at 15. While we agree that the type certificate should be in the record, this void does not defeat the airworthiness allegation in the particular circumstances of this case.

[25] Administrator v. Peacon, NTSB Order No. EA-4607 at 10 (1997); see also Administrator v. Oliver, NTSB Order No. EA-4505 (1996) (Administrator introduced no evidence regarding applicable or relevant sanction guidance).

The Administrator established that the Lycoming engine, after a propeller strike, was not in an airworthy condition until it conformed to AD 2004-10-14. Tr. at 179. It was also established that the only maintenance was the replacement of the propeller and the inspection for purposes of obtaining a ferry permit from Eagles Nest to Charlottesville, and that there were no maintenance entries regarding compliance with the AD between January 27, 2006, and May 1, 2006. Exh. A-17. Based on this record, the Administrator has proved by a preponderance of reliable, probative, and substantial evidence that respondent did not comply with AD 2004-10-14. Therefore, we conclude that the aircraft was in an unairworthy condition.[26]

Even so, with regard to the Administrator's allegation that respondent did not comply with § 91.7(a), respondent also argues that the Administrator has not established that respondent operated the aircraft when he *knew or reasonably should have known* it was not airworthy. He cites Yialamas,[27] in which we held that, because the mechanics who made the maintenance entries did not inform Mr. Yialamas that the aircraft was unairworthy, the Administrator did not meet the burden of

[26] See Administrator v. Nielsen, NTSB Order No. EA-3755 (1992) (before being deemed airworthy, an aircraft must conform to its type certificate as the certificate has been modified by ADs).

[27] Supra at 6-7; but see Bernstein, supra at 5.

proving the violation. In the instant case, respondent relies on a March 22, 2006 maintenance "release" entry that he interpreted as approving the aircraft for return to service. Exh. A-9; Tr. at 332.

Respondent also asserts that the mechanic who made the entry did not tell him that the aircraft was unairworthy. Tr. at 122, 128. Yialamas does not help respondent, however, because the record indicates that, on March 11, 2006, before either of the alleged violative flights, respondent sent a letter to the mechanic, telling him that the FAA advised respondent that he needed another inspection of the aircraft before the FAA would issue a second ferry permit. Exh. A-8. Further, the maintenance entry stated only that the aircraft was safe for a one-time flight from Eagles Nest to Charlottesville. Exh. A-9. Based on the facts in this record, we find that it was unreasonable for respondent to believe the maintenance entry was a release for all flights to any location and, in particular, the first violative flight from Charlottesville to Culpeper.

Likewise, Mr. Smith testified that he told respondent he would need a ferry permit to fly from Culpeper to Hampton Roads. Tr. at 139. A few months later, Mr. Smith wrote Mr. Smeltz that respondent asked about the cost to "perform a teardown inspection to comply with AD2004-10-14." Exh. A-15 (emphasis

added). The evidence leads us to conclude that respondent knew or should have known that his aircraft was not airworthy for the second violative flight. We find that respondent knew or reasonably should have known that the aircraft was unairworthy for both flights at issue. Therefore, we find that respondent committed the alleged airworthiness violations, 14 C.F.R. §§ 39.7 and 91.7(a), by operating an aircraft product that did not meet the requirements of an applicable AD and operating a civil aircraft in an unairworthy condition.

Maintenance.

Repair of discrepancies. The law judge also concluded that the Administrator had met the burden of proving that respondent violated § 91.405(a), which requires an owner or operator of an aircraft to have known maintenance discrepancies repaired between required maintenance inspections. As the factual basis for that finding, the law judge found that, at the time of the flights on March 26 and April 15, respondent did not have maintenance discrepancies repaired. Mr. Dodson testified that he referred to the manufacturer's maintenance manual and to Advisory Circular 43.13 and determined that the damage from the gear-up landing required repair before the aircraft could return to service. Tr. at 73-74. Mr. Smeltz testified that he considered the incorrect installation of the nose landing gear doors as a discrepancy. Tr. at 264. Mr. Keymont testified that

the damage he observed, from the gear-up landing, would involve a major repair. Tr. at 234-38, 257. We conclude that this evidence is sufficient to carry the Administrator's burden to prove by a preponderance of reliable, probative, and substantial evidence that respondent failed to have maintenance discrepancies repaired between required inspections. We affirm the law judge's finding of a violation of § 91.405(a).

Unauthorized maintenance. In addition, the law judge concluded that respondent violated § 43.3(a), which mandates that only authorized persons perform maintenance on an aircraft or aircraft products. As part of the factual basis for this allegation, the law judge found that, on or about January 31 and April 12, 2006, respondent performed maintenance on the aircraft when he was not authorized to do so.

The Administrator alleges that respondent installed nose landing gear doors in violation of § 43.3(a), and that, although respondent may perform preventive maintenance on his aircraft, the definition of preventive maintenance in Appendix A of FAR Part 43 does not include installation of landing gear doors. In response, respondent argues that he was authorized to install the landing gear doors. Respondent testified that he installed the nose gear doors under the supervision of a licensed aircraft mechanic, but he could not provide the name of that mechanic. Tr. at 387. We note that the definition of "preventive

maintenance" in Appendix A of FAR Part 43 does not include the installation of landing gear doors. Given that absence, and the fact that we must defer to the Administrator's interpretation of FAA regulations,[28] we conclude that the Administrator has established that respondent violated § 43.3(a).

The Administrator also alleges that respondent violated § 43.3(a) by replacing the DME and transponder antennas and installing the fairings. Respondent contends that Part 43 allows him to perform such preventive maintenance. We conclude that Part 43 indicates that respondent was authorized to install the fairings, but not the antennas at issue.[29] Moreover, respondent does not argue that a certified mechanic supervised this installation. As such, we find that the Administrator has established that respondent violated § 43.3(a) by installing the antennas, but has not established a violation of § 43.3(a) based on respondent's installation of the fairings.

The Administrator also alleged that respondent fabricated belly panels and attached them with pop rivets, and that the panels did not fit. Respondent argues that he did not put the pop rivets on the belly of the aircraft, and that a metal strip

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[28] 49 U.S.C. § 44709(d)(3); Garvey v. NTSB, 190 F.3d 571, 577-78 (D.C. Cir. 1999).

[29] See FAR Part 43, Appendix A, paragraphs (c)(9), and (31) and (32), which reference refinishing of fairings, but exclude transponder and distance measuring equipment.

on a belly fairing was there to strengthen it. Respondent's Appeal Br. at 25-26; Tr. at 173. We have reviewed the record and determined that, while there is evidence regarding the belly panels and the rivets, there is no evidence that respondent "fabricated" or installed belly panels incorrectly. Respondent established that they were not installed with pop rivets, but only that a strip of metal was riveted to the panel. Tr. at 173-74. We find that the Administrator has failed to carry the burden of proving that respondent violated § 43.3 by fabricating panels and attaching them with pop rivets.

As to the remaining factual allegations concerning violations of § 43.3(a), we find that the Administrator has not established that respondent violated § 43.3(a) by using tape and paint to repair scrape damage, and by "not ... [accomplishing]" AD 2004-10-14. We agree that the Administrator did not provide sufficient evidence that respondent repaired such damage as alleged. Respondent's Appeal Br. at 26. Indeed, the Administrator only presented evidence from Mr. Smith that the panel was covered with metalized tape, not necessarily that it was repaired, and Mr. Smith testified that he did not know what was under the tape. Tr. at 175. Likewise, we reject the allegation that respondent violated § 43.3(a) with regard to AD 2004-10-14 and agree with respondent's argument that the allegation in this regard is unclear. Based on the foregoing,

we find that the Administrator met the burden of establishing that respondent violated § 43.3(a) with regard to respondent's installation of the landing gear doors and antennas, but that the Administrator did not meet the burden of proving the allegations regarding the fabricated belly panels, repair of scrape damage, or installation of fairings. We cannot reconcile the law judge's factual findings regarding unauthorized maintenance with the evidence in this record as to any of the factual allegations except the nose landing gear doors and antennas.[30]

Recording maintenance entries. The law judge found that respondent violated § 43.9, which requires each person who performs maintenance to make an entry in the maintenance record, and requires that the entry include certain information. The law judge found that maintenance work on the aircraft was not recorded in the aircraft maintenance log. However, the evidence indicates that there were maintenance entries for the attachment of the metal strip, and the belly panel, gear door, and fairing and antenna installations. The Administrator does not address respondent's argument in the reply brief. Based on our review of the evidence, we find that the maintenance records include

[30] See Andrzejewski, supra; Frohmuth and Dworak, supra; and Wolf, supra.

these entries regarding subparagraphs (a) through (c) and (e) of paragraph 28 of the Administrator's complaint.

While we acknowledge that respondent made entries in the maintenance log as to some of the maintenance, § 43.9 also requires that maintenance entries include certain information. The maintenance log entries as to the nose landing gear doors and antennas do not include the required signature, certificate number, and kind of certificate held by the person approving the work. Exh. A-9. The landing gear entry also does not include the name of the person performing the work. Id. We conclude, therefore, that the Administrator has established that respondent violated § 43.9, and we affirm the law judge's finding in that regard.

Maintenance methods, techniques, and practices. The law judge also found that respondent violated § 43.13(a), which requires each person performing maintenance to use the methods, techniques, and practices prescribed in the manufacturer's maintenance manual or instructions for continued airworthiness prepared by its manufacturers or other methods acceptable to the Administrator. Respondent challenges the law judge's finding, and the underlying factual basis for the finding, arguing that the Administrator has not produced sufficient evidence that he failed to use prescribed maintenance methods, techniques, and practices. Respondent's Appeal Br. at 27. While we do not

agree with some of the law judge's findings, we do find that a preponderance of reliable, probative, and substantial evidence supports the finding regarding improper installation of the nose landing gear doors. Tr. at 152-55, 164-66; Exhs. A-14, A-15.[31] The evidence therefore supports the allegation that respondent failed to use proper maintenance methods, techniques, and practices in the installation of landing gear doors; as such, we affirm the law judge's finding of a violation of § 43.13(a).

Manner of maintenance and quality of materials. The law judge found that respondent violated § 43.13(b), which requires that a person performing maintenance do so in such a manner or with materials of such quality that the condition of the aircraft is at least equal to its original or properly altered condition. Respondent argues that no findings of fact support this allegation and that there is no factual basis, therefore, for the finding that he violated § 43.13(b). Respondent's Appeal Br. at 30; see Tr. at 467. Based on his incorrect installation of the nose landing gear doors, however, we find that a preponderance of reliable, probative, and substantial

[31] The nose gear doors were installed backwards, with the hinges oriented incorrectly so that they would have jammed had the gear been retracted during flight, and were installed with pop rivets (Tr. at 152, 155; Exhs. A-14, A-15), which are not approved for landing gear doors (Tr. at 153).

evidence supports the Administrator's allegation, and we affirm the law judge's finding of a violation of § 43.13(b).

Careless and reckless operation.

Finally, respondent also disputes the law judge's finding that he violated § 91.13(a); respondent argues that every witness indicated the aircraft was safe to fly and that, therefore, the flights were not careless nor did they endanger life or property. Respondent's Appeal Br. at 18, 24. Given that the Administrator included this § 91.13(a) charge as a residual violation, based upon the other alleged violations, we do not find respondent's argument persuasive. We have affirmed the findings with regard to the independent operational violations. Therefore, we conclude that respondent's violations of the operational regulations discussed above also caused him to violate § 91.13(a) with regard to the charged flights.[32]

Administrator's Appeal

The Administrator appeals the law judge's reduction of the sanction and argues that respondent's violations were deliberate and demonstrated unwillingness or inability to comply with the FARs. However, the Administrator did not introduce the Sanction Guidance Table, FAA Order 2150.3A, Compliance and Enforcement Program, Appendix, into evidence at the hearing. Moreover, as

[32] See Seyb, supra at 4; Nix, supra at 3; and Pierce, supra at 1 n.2.

discussed above, we do not agree with the law judge's findings that a preponderance of reliable, probative, and substantial evidence supports all of the factual allegations, even though there was still at least one factual allegation that supported a violation of each FAR paragraph.

It is the Administrator's burden to articulate clearly the desired sanction, and to ask the Board to defer to that determination, supporting the request with evidence showing that the sanction was not selected in an arbitrary or capricious manner, and that the Administrator's choice of sanction is not contrary to law.[33] The Administrator's choice of sanction is not entitled to deference because of the failure to introduce the Sanction Guidance Table, but in this case we find that respondent's intentional, deliberate violation of safety regulations when he found them inconvenient or disagreeable is particularly egregious. Respondent admitted that he called AD 2004-10-14 ill-conceived, poorly written, and absurd. Tr. at 407-408. We conclude that respondent knowingly and intentionally ignored and disregarded rules meant to ensure public safety. He was advised at every turn that a ferry permit was required, and he chose to substitute his own judgment for that of the mechanics and aviation safety inspectors who advised

[33] Peacon, supra at 10.

him. Respondent's testimony that he considered the aircraft airworthy because it complied with all ADs at the time of a December 2005 annual inspection quite clearly misses the mark, given that his January 2006 crash landing occurred after that inspection.

We have repeatedly upheld revocation where the respondent's non-compliance disposition is demonstrated.[34] We have also held that an airman displaying such a negative compliance disposition lacks the care, judgment, and responsibility required of a certificate holder because the likelihood of his adherence to regulatory requirements adopted to promote air safety cannot be predicted with any degree of confidence.[35] Despite the failure of the Administrator to put the Sanction Guidance Table into the record, we find that the selection of sanction is not arbitrary, capricious, or contrary to law and precedent, and that revocation is the appropriate sanction for this respondent.

Conclusion

We deny respondent's appeal, and affirm the law judge's findings that respondent violated FAR §§ 39.7, 43.13(a),

[34] Administrator v. Bigger, NTSB Order No. EA-4856 at 3 (2000), citing Administrator v. Bennett, NTSB Order No. EA-4762 at 3 (1999); Administrator v. Basulto, NTSB Order No. EA-4474 at 10 (1996) (imposing revocation for intentional conduct that demonstrated lack of compliance disposition).

[35] Administrator v. McKinley, 7 NTSB 798 (1991).

43.13(b), 43.3(a), 43.9, 91.13(a), 91.405(a), and 91.7(a). We grant the Administrator's appeal as to sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The Administrator's appeal is granted;

3. The law judge's decision reducing the sanction from revocation to a 10-month suspension is reversed; and

4. The Administator's revocation of respondent's private pilot certificate is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

Appendix

The Administrator's October 10, 2006 emergency revocation order contained these pertinent allegations:

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2. At all relevant times you were the owner of civil aircraft, a Mooney M20J, identification number N1139Y.

***

Count I

4. On or about January 27, 2006,[36] N1139Y was involved in a gear up landing.

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7. From on or about January 27, 2006 through on or about May 1, 2006, N1139Y was in an unairworthy condition.

8. On or about February 24, 2006, you obtained a special flight permit to fly N1139Y to Charlottesville Airport, Virginia (CHO) in order to repair the damage resulting from the January 27, 2006 gear up landing.

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11. At the time of the March 26, 2006 flight from CHO to CJR [Culpeper, Virginia], N1139Y was in an unairworthy condition.

12. Among the conditions that rendered N1139Y unairworthy were:

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[36] The complaint alleged the gear-up landing was on January 31, 2006, and that the flights at issue occurred on March 22, 2006, and April 12, 2006. At the hearing, the Administrator requested that the complaint be conformed to the proof, which showed that the accident flight occurred on January 27, 2006 (Tr. at 312, 419-21), that the first violative flight occurred on March 26, 2006 (Tr. at 421-22), and that the second violative flight occurred on April 15, 2006 (Tr. at 422-23). The dates shown herein are the corrected dates.

a. the belly fairings and inspection panels were not installed on the aircraft;

b. the left main landing gear doors had scrape damage;

c. the left wing root panel had scrape damage;

d. Airworthiness Directive (AD) 2004-10-14, which is required after a propeller strike, had not been accomplished.

***

14. At the time of the March 26, 2006 flight, you failed to have maintenance discrepancies on N1139Y repaired.

15. At the time of the March 26, 2006 flight, you operated N1139Y when it did not meet the requirements of AD 2004-10-14.

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17. At the time of the March 26, 2006 flight, you operated N1139Y in a careless or reckless manner so as to endanger the life or property of another.

***

19. At the time of the April 15, 2006 flight from CJR to PVG [Hampton Roads, Virginia], N1139Y was in an unairworthy condition.

20. Among the conditions that rendered N1139Y unairworthy were:

a. the panels in the lower fuselage belly area did not fit;

b. the left main landing gear doors had scrape damage;

c.[37] the nose landing gear doors had been installed incorrectly with the hinge oriented

[37] The Administrator mislabeled the third subparagraph of this paragraph with a second "b," and the ensuing subparagraphs as c, d, and e. We have corrected these errors in this opinion and order; the subparagraphs are labeled "a" through "f."

incorrectly such that the doors would have jammed up if the gear had been retracted;

d. aluminum hardware store variety pop rivets were used to install the lower fuselage belly area panels and the nose landing gear doors;

e. the left wing root panel had scrape damage and was repaired with duct tape and paint; and

f. Airworthiness Directive (AD) 2004-10-14, had not been accomplished.

***

22. At the time of the April 15, 2006 flight, you failed to have maintenance discrepancies on N1139Y repaired.

23. At the time of the April 15, 2006 flight, you operated N1139Y when it did not meet the requirements of AD 2004-10-14.

24. At the time of the April 15, 2006 flight, you operated N1139Y when it was not in an airworthy condition.

25. At the time of the April 15, 2006 flight, you operated N1139Y in a careless or reckless manner so as to endanger the life or property of another.

Count II

***

27. Between on or about January 27, 2006 and on or about April 12, 2006, you performed maintenance on N1139Y when you were not authorized to do so.

28. Specifically:

a. panels were fabricated for the lower fuselage belly area which did not fit;

b. the lower fuselage belly area panels referred to in paragraph (a) above, were installed with aluminum, hardware store variety pop rivets;

c. the nose landing gear doors were installed incorrectly with the hinge oriented incorrectly such

that the doors would have jammed up if the gear had been retracted;

d. scrape damage to the left wing root panel was repaired with duct tape and paint;

e. the DME and transponder antennas were replaced onto the fairing and the fairing was installed with screws; and

f. Airworthiness Directive (AD) 2004-10-14, had not been accomplished.

29. None of the maintenance described in paragraph 27 above, was recorded in the aircraft maintenance log.

30. By reason of the above, you maint[ain]ed, rebuilt, altered, or performed preventive maintenance on an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which Part 43 of the FARs applies when you were not qualified to do so.

31. By reason of the above, you failed to use the methods, techniques, and practices prescribed in the current manufacturers maintenance manual or Instructions For Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator when you maintained N1139Y.

32. By reason of the above, you maintained, performed preventive maintenance on, rebuilt, or altered an aircraft, airframe, aircraft engine, propeller, appliance or component part without making an entry in the maintenance record of that equipment containing (1) a description of work performed; (2) the date of completion of the work performed; (3) the name of the person performing the work; and (4) the signature, certificate number and kind of certificate held by the person approving the work.